IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13096 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MULRAJSINH DILAVARSINH JADEJA

Versus

SURENDRANAGAR DISTRICT PANCHAYAT

Appearance:

1. Special Civil Application No. 13096 of 2000

MRS DT SHAH for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 17/11/2003

ORAL JUDGEMENT

Heard learned advocate Mrs. D.T.Shah for petitioner and learned advocate Mr. H.S.Munshaw appearing on behalf of respondents.

2. The brief facts of the present petitioner as under.

2.1 Initially, the petitioner was employed by the respondents from 10.10.1986 as a Driver. Thereafter, his services was terminated illegally. That termination order was challenged by him in Reference No. 9 of 1991 which was allowed by the Labour Court, Surendranagar on 6.1.1999, wherein, Labour Court has granted reinstatement with continuity of service with 60% backwages of interim period. The said award was challenged by the respondents before the learned Single Judge before this Court. That Special Civil Application was dismissed. The said order of reinstatement was not implemented by the respondents and that is how Contempt Petition being MCA No. 2448 of 1999 was filed wherein the order has been passed on 10.12.1999. Thereafter, petitioner had approached to the respondents on 14.12.1999 along with Secretary of the Union but he was not allowed to work. Then petitioner had instructed the Advocate. Accordingly, legal notice was served dated 17.1.2000 which was replied by the respondents on 7.2.2000. But, the grievance of the petitioner still remain that though award has been passed in favour of the petitioner and after the dismissal of the petition as well as Letters Patent Appeal, the award in question is not fully implemented by the respondents as the respondents have not allowed the petitioner to work. Back wages have been paid but that is not adequate and proper.

Therefore, learned advocate Mrs. D.T.Shah appearing on behalf of the petitioner has submitted that non-compliance of the award and not to allow to work by the respondents to the petitioner amounts to breach of award. She also submitted that one reference being No. 22/2000 is pending before the Labour Court, Surendranagar about regularisation of the service condition of the petitioner on the basis of Government Circular dated 17.10.1988. Therefore, she submitted that some observations may be made and direction may be issued to the Labour Court, Surendra Nagar so that Labour Court, Surendranagar may expedite the hearing and pass appropriate orders.

3. Learned advocate Mr. H.S.Munshaw appearing on behalf of the respondents has submitted that petitioner was working as a daily wager and he has never been paid monthly salary Rs.750.00 by the respondents. The contention raised by the respondents is that the work was depend upon the availability of the work and funds and

now the work is not available and, that is how, the work is not provided to the petitioner. The details have been given by the respondents about the payment which has been made to the petitioner. In light of this defence of the respondents and considering the facts, if the respondents do not allow the petitioner to work, as per the award passed by the Labour Court, Surendranagar, then it is open for the petitioner to take appropriate action against the respondents which is available under the machinery of the Industrial Disputes Act, 1947 or under the provisions of Contempt of Court Act. In respect of the less payment made to the petitioner, according to him, then it is open for the petitioner to file recovery application based upon the award under Section 33(C) (2) of the Act. So far as regularising the service of the petitioner is concerned, Reference No. 22/2000 which is pending before the Labour Court, Surendranagar wherein the claim is made for monthly salary of Rs.750.00, for that petitioner can prosecute that remedy properly and, in view of this fact, it is directed to the Labour Court, Surendranagar, to examine Reference No. 22/2000 as early as possible and adjudicate the issue within a period of six months from the date of receiving the copy of this order.

4. In view of the above observations and directions, while keeping all the rights of the petitioner for implementation of the award including less salary, the present petition is disposed of with no order as to costs. Rule is discharged.

5. It is directed to the registry of this Court that writ may be sent to the Labour Court, Surendranagar immediately without any delay.

(H.K.Rathod,J)

Jayanti*